IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 338 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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INDUSTRIAL CONSTRUCTION COMPANY

Versus

MAFATLAL INDUSTRIES LIMITED

Appearance:

1. Appeal from Order No. 338 of 1997

MR PK JANI for Petitioner No. 1

MR NAVIN K PAHWA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 27/09/2001

ORAL JUDGEMENT

1. The appellant - defendant No.1 has challenged in this Appeal the impugned order dated 11.4.1997 passed by the learned City Civil Judge, Court No.19, Ahmedabad,

whereby the learned Judge allowed the Notice of Motion and confirmed the ad.interim relief granted earlier on 29.3.1995 in favour of the respondent - plaintiff till the final disposal of the Suit.

2. Learned Counsel Shri P.K.Jani for the appellant vehemently submitted that the learned Judge committed a grave error in allowing the Notice of Motion and confirming the ex-parte ad.interim injunction granted earlier in favour of the respondent - plaintiff. He submitted that when there was arbitration clause then the jurisdiction of the Civil Court is barred. Inspite of it the learned Judge entertained the Application Ex.5 only on the ground that No Due Certificate was alreadya given by the contractor. He submitted that even if No Due Certificate is given the Civil Court will have no jurisdiction if subsequently the dispute is raised. In support of his submission he placed reliance upon the Judgments of the Hon'bleSupreme Court in (i) AIR 1974 SC 158, and (ii) AIR 1988 SC 1172. He therefore submitted that this Court may allow this Appeal and set aside the impugned order passed by the learned Judge.

3. However, learned Counsel Shri Pahwa for the respondent - plaintiff vehemently submitted that the learned Judge has committed no error while passing the impugned order. In any case, he submitted that there was ex-parte ad.interim order operating in favour of the respondent - plaintiff since 1995 which was by-party confirmed in 1997 and though this Appeal is of 1997 there is no interim order granted by this Court in Civil Application No.6237 of 1997 filed in it. In fact Civil Application No.6237 of 1997 was disposed of way back on 24.10.1997 with no orders on it. Under the circumstances he submitted that instead of deciding this point in this matter it is desirable that the learned Judge be directed to decide this issue as preliminary issue in a Suit filed by the respondent - plaintiff without being swayed away with the observation made by his predecessor while deciding the Application Ex.5 by the impugned order.

4. Considering the rival submissions made by the learned Counsel for the parties I am of the considered opinion that instead of expressing any opinion in this Appeal it is desirable that the learned trial Judge be directed to decide this issue as a preliminary issue as to whether the Civil Court has jurisdiction in the matter or not, because there is already ex-parte ad.interim order operating in favour of the respondent - plaintiff since 1995 and after it was confirmed by-party in 1997 there is no order in favour of the appellant. I may make

it clear that if this Appeal had come up for hearing immediately after passing of the order by the learned Judge perhaps this Court would have gone into the question raised in this Appeal and decide. However, on facts I am of the considered opinion that instead of expressing any opinion let the trial Court decides this issue as preliminary issue.

5. Accordingly, this Appeal is disposed of with direction to the learned trial Judge to first decide the question of jurisdiction latest by 31st March, 2002. It goes without saying that the learned Judge will consider the aforesaid Judgments cited by Shri Jani before this Court as well as any other judgment which is available to him on the point as to whether the Civil Court has jurisdiction in the matter. He will also consider any other judgments cited on behalf of the respondent before him. While deciding the issue he shall not swayed away with the observations or findings arrived at by his predecessor while deciding athe Application Ex.5. The parties shall fully cooperate in getting this preliminary issue decided.

With this observation this Appeal is disposed of.

sd/-

Date : September 27, 2001 (B.J.Shethna, J.)

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